STATE OF MICHIGAN

COURT OF APPEALS

In re A. L. PEER, Minor.

UNPUBLISHED
January 23, 2020

No. 349538
Wayne Circuit Court
Family Division
LC No. 16-523744-NA

Before: K. F. KELLY, P.J., and BORRELLO and SERVITTO, JJ.

PER CURIAM.

Respondent-father appeals as of right the order terminating his parental rights to the minor child ALP under MCL 712A.19b(c)(*ii*) ("[o]ther conditions exist that cause the child to come within the court's jurisdiction"), and MCL 712A.19b(3)(j) ("[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent").[1] For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

ALP was removed from her mother and respondent-father's care in November 2016 because of allegations that respondent-father physically abused CD and BP, two unrelated children in his household, respondent-father used illegal drugs in the presence of CD, BP, and ALP, and respondent-father and the mother of the three children engaged in domestic violence in the presence of the children. At a January 2017 hearing, the referee found that respondent-father abused crack cocaine in the presence of the children, had a violent domestic relationship with the children's mother in the presence of the children, and regularly physically abused CD and BP, making the children temporary wards of the court.

[1] In the trial court, this case involved three children: (1) CD and (2) BP, and (3) ALP. Respondent-father is the father of ALP. The mother of the three children voluntarily released her rights to CD, BP, and ALP. Respondent-father is the only parent who appealed the trial court's order terminating parental rights.

Respondent-father's service plan included the following: (1) compliance with the terms of his probation; (2) domestic violence counseling; (3) individual therapy, which had a substance abuse component; (4) a psychological evaluation; (5) suitable housing; (6) maintain income; (7) maintain contact with DHHS foster care workers; (8) attend court hearings; (9) attend parenting classes; (10) attend supervised visitations; and (11) take weekly random drug screens. In addition, on March 27, 2017, respondent-father was ordered to participate in inpatient substance abuse services on petitioner's request.

Respondent-father completed only 3 out of 51 drug screens; and of those three drug screens, two screens were positive for cocaine, and one was positive for cocaine and marijuana. On two occasions, respondent-father refused to allow the DHHS foster care worker to administer drug screens, stating that he would test positive for marijuana on one occasion and cocaine on another occasion. With the exception of respondent-father's periods in jail,[2] all of respondent-father's missed drug screens were considered positive screens. Despite respondent-father's substance abuse issues, the DHHS continued to refer respondent-father to services. Respondent-father voluntarily entered into an inpatient drug program in 2018, but did not successfully complete the program. Shortly thereafter, respondent-father was in the Wayne County Jail immediately after he was terminated from the inpatient program, until January 2019. Further, respondent-father admitted that he used cocaine two months before the proceeding terminating his parental rights, and when asked whether he continued to suffer from substance abuse, respondent-father said, "I don't know."

On the basis of the testimony and exhibits, the trial court found the material allegations contained in the petition were substantiated, determined that clear and convincing evidence supported the termination of respondent-father's parental rights under MCL 712A.19b(3)(c)(*i*) and MCL 712A.19b(3)(j), and determined that it was in ALP's best interests that respondent-father's parental rights be termination.

II. ANALYSIS

As an initial matter, we note that on appeal it is somewhat difficult to ascertain the basis for respondent-father's arguments. He seemingly argues that his barrier to reunification was substance abuse and the DHHS did not use reasonable efforts to provide him with a treatment plan. However, respondent-father does not argue, cite caselaw, or in any manner address or challenge the statutory grounds for termination of his parental rights, other than to suggest that "clear and convincing evidence warranting termination under [MCL 712A.19b(3)(c)(*i*) and MCL 712A.19b(3)(j)] was not presented." It is well recognized that an appellant cannot simply announce a position and then expect this Court to discover and rationalize the basis for his claims. Nor can an appellant give only cursory treatment to an issue with little or no citation of

[2] Respondent-father was jailed in May 2017 for breaking and entering, in December 2017 for possession, between January 2018 and June 2018 for resisting arrest or assaulting a police officer, and between December 2018 and January 2019. While in jail, respondent-father participated in, but did not complete, substance abuse and domestic violence counseling, parenting classes, and a course regarding the transition back into the community.

supporting authority. MCR 7.212(C)(7); *McIntosh v McIntosh*, 282 Mich App 471, 485; 768 NW 2d 325 (2009). As such, this Court could construe any purported challenge to the sufficiency of the evidence for establishment of the statutory grounds for termination to be abandoned by respondent-father. As noted, respondent somewhat acknowledges that his focus on appeal is the alleged inadequacy of the efforts expended by the DHHS to assist respondent-father to obtain reunification with his child. Specifically, respondent-father's emphasis and argument exclusively involves his contention that the DHHS's provision of services was inadequate because the DHHS should have immediately, upon the court's assumption of jurisdiction, referred respondent-father for inpatient substance abuse services. Respondent-father argues that until his substance abuse issues were resolved, it was unlikely that he could successfully attain the other goals in his service plan and obtain reunification.

We ascertain from his writings that respondent-father argues that reunification efforts were inadequate because he was not immediately placed in an inpatient substance abuse rehabilitation program. Hence, we presume respondent-father's position that anything short of an immediate order concerning drug rehabilitation was unreasonable, because his addiction impaired his ability to comply with the other components of his treatment plan.

In order to preserve the issue whether reasonable efforts were made to reunify a child with his or her family, a respondent must "object or indicate that the services provided to them were somehow inadequate" at the trial court level. *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). Respondent-father failed to argue that the services offered were inadequate for him to reunify with ALP. Therefore, the issue is unpreserved.

Unpreserved questions are reviewed for plain error. *In re Ferranti*, ___ Mich ___, ___; ___ NW2d ___ (2019) (Docket No. 157907); slip op at 24.

> To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights. The third requirement generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings. It is the defendant rather than the Government who bears the burden of persuasion with respect to prejudice. [*Id*. (quotations marks omitted), quoting *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).]

The appellant bears the burden of persuasion with respect to prejudice. See *Id*. ("It is the defendant rather than the Government who bears the burden of persuasion with respect to prejudice.") (citation and quotation marks omitted).

Barring certain exceptions, not applicable in this case, the DHHS "has an affirmative duty to make reasonable efforts to reunify a family before seeking termination of parental rights." *In re Hicks/Brown Minors*, 500 Mich 79, 85; 893 NW2d 637 (2017) (citations omitted). "As part of these reasonable efforts, [DHHS] must create a service plan outlining the steps that both it and the parent will take to rectify the issues that led to court involvement and to achieve reunification." *Id*. at 85-86, citing MCL 712A.18f(3)(d). At each review hearing, the court must consider the parent's compliance with the treatment plan regarding the services provided, and whether the parent has benefited from those services. *In re Mason*, 486 Mich 142, 156; 782

NW2d 747 (2010). The trial court "is not required to terminate parental rights if the State has not provided to the family of the child . . . such services as the State deems necessary for the safe return of the child to the child's home." *In re Rood*, 483 Mich 73, 105; 763 NW2d 587 (2009).

"The adequacy of the petitioner's efforts to provide services may bear on whether there is sufficient evidence to terminate a parent's rights." *In re Rood*, 483 Mich at 89. "While the [DHHS] has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Frey*, 297 Mich App at 248. As noted, in addition to participating in the treatment plan, respondents must also "demonstrate that they sufficiently benefited from the services provided." *Id*. Further, a respondent must establish that he would have made better progress had other services had been offered. See *In re Fried*, 266 Mich App 535, 543; 702 NW2d 192 (2005) ("The fact that respondent sought treatment independently in no way compels the conclusion that petitioner's efforts toward reunification were not reasonable, and, more to the point, does not suggest that respondent would have fared better if the worker had offered those additional services to him.").

Respondent-father asserts that the DHHS should have required him to enter into an inpatient drug rehabilitation program "the very minute that he made admissions in his case." Respondent-father contends that he would have been able to overcome his addiction to drugs, only after completing a 90-day inpatient drug program. Such a pronouncement is speculative, and in contrast to record evidence. Respondent-father admitted that the DHHS offered him opportunities to become substance free beginning in January 2017. Shortly thereafter, the trial court ordered respondent-father, after a request by the DHHS, to enter into an inpatient drug rehabilitation program, in March 2017. The referee stated:

> I'll adopt the recommendation; continue with the services. I am going to order inpatient substance abuse services. Uhm—parents need to be in compliance with their probation. They need to—they are—they're in partial compliance with the service plan, as far as participating in the services; but they're not doing the drug screens. And that seems to be an issue; and they continue to engage in substance abuse. So that's why I'm ordering the inpatient substance abuse services.

Hence, in his argument on appeal, respondent-father fails to acknowledge that the record revealed that his counsel objected to the inpatient treatment request by DHHS, on the grounds that respondent-father's services had just begun. We accordingly find respondent-father's primary argument on appeal, at the very least, disingenuous.

Additionally, respondent-father fails to recognize that the DHHS only had to "expend reasonable efforts to provide services to secure reunification," and that respondent-father was obligated "to participate in the services that are offered." *In re Frey*, 297 Mich App at 248. Respondent-father did not immediately enter an inpatient program and did not complete any component of his treatment plan, from March 2017 to June 2018, including substance abuse and domestic violence therapy, the completion of his psychological evaluation, and participation in parenting classes. Further, respondent-father did not consistently maintain employment, and did not attend all court hearings.

From March 2017 to June 2018, respondent-father completed only 3 out of 51 drug screens; two screens were positive for cocaine, and one screen was positive for cocaine and marijuana. On two occasions, respondent-father refused to allow the DHHS foster care worker to administer his drug screens, stating that he would test positive for marijuana on one occasion and cocaine on another occasion. With the exception of respondent-father's periods in jail, all of respondent-father's missed drug screens were considered positive screens. Still, the DHHS continued to refer respondent-father to services, and tried to assist respondent-father in reaching and maintaining sobriety. Respondent-father was referred to substance abuse and domestic violence therapy in June 2017, September 2017, and December 2017. After respondent-father was jailed between January 2018 and June 2018, respondent-father was again referred to substance abuse and domestic violence therapy, as well as parenting classes, on at least two separate occasions.

Respondent-father asserted that he voluntarily entered an inpatient drug program in 2018, but did not successfully complete the program. Immediately after respondent-father was released from this inpatient program, he was in the Wayne County Jail, until January 2019. Respondent-father's untimely participation in substance abuse treatment does not undermine the adequacy of the DHHS's earlier efforts to address respondent-father's substance abuse problems. See *In re Frey*, 297 Mich App at 248 ("While the DHS has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered.").

Moreover, from June 2018 through March 2019, respondent-father completely refused to participate in any of his court ordered drug screens, including the court's request on March 11, 2019. Respondent-father admitted that he used cocaine two months before March 25, 2019, and when respondent-father was asked whether he continued to suffer from substance abuse, respondent-father said, "I don't know." Thus, there was no indication that respondent-father benefited from his inpatient drug treatment program. On appeal, respondent-father conveniently ignores that the trial court ordered respondent-father to participate in an inpatient program in March 2017, but his counsel objected. Thus, defendant, not the DHHS, contributed to the alleged error. See *In re Utrera*, 281 Mich App 1, 11-12; 761 NW2d 253 (2008) (" '[I]t is settled that error requiring reversal may only be predicated on the trial court's actions and not upon alleged error to which the aggrieved party contributed by plan or negligence.' "), quoting *Lewis v LeGrow*, 258 Mich App 175, 210; 670 NW2d 675 (2003). As such, respondent-father's suggestion that he would have made better progress had inpatient substance abuse service been offered earlier in the proceedings is belied by his refusal of such services and is entirely speculative. See *In re Fried*, 266 Mich App at 543. Therefore, respondent-father cannot support his claim that the DHHS failed to make reasonable efforts to achieve reunification when respondent-father failed to engage in, or accept, the proffered services. Accordingly, respondent-father is not entitled to relief.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Stephen L. Borrello
/s/ Deborah A. Servitto